

March 10, 2021

The Honorable Richard Hilderbrand, Chairperson
Senate Committee on Public Health and Welfare
Statehouse, Room 445A-S
Topeka, Kansas 66612

And

The Honorable Larry Alley, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 136-E
Topeka, Kansas 66612

Dear Senators Hilderbrand and Alley:

SUBJECT: Fiscal Note for SB 92 by Senate Committee on Commerce

In accordance with KSA 75-3715a, the following fiscal note concerning SB 92 is respectfully submitted to your committees.

SB 92 would create the Kansas Equal Access Act which would establish the Kansas Medical Cannabis Agency and the Kansas Medical Cannabis Advisory Board. The Kansas Department of Health and Environment (KDHE) would appoint the Director of the Agency who would need to be confirmed by the Senate. The Director and agents would have the authority of law enforcement officers.

The Director would begin accepting applications for identification cards and licenses on or before January 1, 2022. There would be a fee limit of \$25 for a patient identification card and renewal of the card. Individuals who have been issued a patient or caregiver identification card would be allowed to cultivate, purchase, possess, and use medical cannabis products as authorized by rules and regulations. The bill contains the application process for a medical provider seeking to recommend treatment with medical cannabis and allows for an application fee to be established by the Director.

A medical cannabis registry identification card issued by another state, district, territory, commonwealth, or insular possession of the United States would be recognized by the Director. No state or municipal law enforcement agency would provide any identifying information concerning a patient or caregiver who holds an identification card issued to any federal law enforcement agency or law enforcement agency of another jurisdiction for the purpose of any investigation of a crime involving possession of cannabis. The Kansas Equal Access Act would also prohibit discrimination as it pertains to the use of medical cannabis. The bill would:

1. Allow a commercial real property owner or a business owner to prohibit the consumption of medical cannabis or medical cannabis products on the owners' premises by smoking or vaporizing;
2. Define the application process for a person seeking to operate a cultivation, testing laboratory, processor, or dispensary facility and stipulate that the license will be issued by the Director and an application fee may be required;
3. Require any owner, director, officer, or agent on an application for a facility license to be fingerprinted and to submit to a state and national criminal history record check which would be subject to a reasonable fee charged by the Kansas Bureau of Investigation;
4. Provide the reasons the Director could refuse to issue or renew, revoke, or suspend a facility license;
5. Define the violations for which the Director could impose a civil penalty or suspend or revoke a facility license;
6. Require the Director to establish and maintain an electronic database to monitor medical cannabis from its seed source through its cultivation, testing, processing, distribution, and dispensing;
7. Establish the Medical Cannabis Regulation Fund in the state treasury to be administered by the Director of the Kansas Medical Cannabis Agency. Monies in the Medical Cannabis Regulation Fund would be used for costs related to the regulation and enforcement of the cultivation, possession, processing, and sale of medical cannabis by the Kansas Medical Cannabis Agency;
8. Impose a privilege tax of 4.0 percent on the gross receipts received from the sale of medical cannabis. Every licensed dispensary shall file a monthly return with the Director of Taxation accompanied by a remittance for the full tax liability shown;
9. Establish the Medical Cannabis Revenues Fund in the state treasury. All moneys credited to such fund shall be expended or transferred only for the purposes of medical cannabis research, public health programs, mental health programs, telemedicine programs, drug and alcohol abuse and prevention programs, elementary and secondary school health programs, broadband or high-speed internet connectivity initiatives, expenditures from the

state water plan fund and property tax relief for individuals who are 60 years of age or older. The first \$4.0 million credited to the Medical Cannabis Revenues Fund shall be transferred by the Director of Accounts and Reports to the Operating Grant account of the State General Fund in the Department of Commerce to be expended for the expansion of broadband internet connectivity. The next \$4.0 million credited to the Medical Cannabis Revenues Fund shall be transferred to the Community Crisis Stabilization Centers Fund of the Kansas Department for Aging and Disability Services. The next \$4.0 million credited to the Medical Cannabis Revenues Fund shall be transferred to the State Water Plan Fund;

10. Allow the board of education of a school district to prohibit the consumption of medical cannabis on the premises of any school operated by such school district except by individuals holding an identification card who consume medical cannabis through means other than smoking or vaporizing. A student who is enrolled in a school district and who is a patient holding an identification card would be permitted to consume medical cannabis administered by the school nurse or such student’s parent or caregiver as recommended by the student’s medical provider. No student would be denied participation in any curricular or extracurricular activities solely on the basis that such student possesses or consumes medical cannabis in accordance with the provisions of the Kansas Equal Access Act; and
11. Permit the governing body of a postsecondary educational institution to allow any student enrolled, who is a patient holding an identification card, to possess and consume medical cannabis in accordance with the provisions of the Kansas Equal Access Act. The student would not be denied participation in any curricular or extracurricular activities solely on the basis that the student possesses or consumes medical cannabis in accordance with the provisions of the Kansas Equal Access Act.

The Kansas Department of Revenue indicates that enactment of SB 92 would have an administrative fiscal effect on expenditures of \$789,633 in FY 2022 from the Medical Cannabis Revenues Fund. This would include increases to accounting and tax operations, testing of systems, system development and project management expenses. KDHE estimates that patients will begin making purchases of medical cannabis beginning July 1, 2023. A 4.0 percent gross receipts tax on the sale of medical cannabis would be imposed and remitted to the Director of Taxation. Moneys received would be deposited by the State treasurer into the Medical Cannabis Revenues Fund. Sales tax would not be applied to the sale of medical cannabis due to the excise tax in Section 22 of the bill. Privilege tax revenues are estimated based on the assumption that the average each patient would spend per year is \$1,504 as shown below.

<u>Fiscal Year</u>	<u># of Patients</u>	<u>% of Kansas Population</u>	<u>Sales per Registered Patient</u>	<u>Total Medical Cannabis Sales</u>	<u>Total Revenue (4% Privilege Tax)</u>
2022	--	--	--	--	--
2023	--	--	--	--	--
2024	14,567	0.5%	\$1,504	\$21,908,768	\$ 876,351
2025	29,133	1.0%	\$1,504	\$43,816,032	\$1,752,641
2026	58,266	2.0%	\$1,504	\$87,632,064	\$3,505,283

KDHE indicates that enactment of SB 92 would increase expenditures by \$150,715 from the State General Fund for an additional 7.75 FTE positions for two months of FY 2021 and by \$5.7 million for an additional 22.00 FTE positions in FY 2022. The estimates include costs for salaries and fringe benefits and for a web-based, information system with cloud storage that will electronically establish patient and caregiver identification cards and provide access to the patient system by law enforcement, physician community and others. The estimate includes the costs to create a new program, develop a new information system, incorporate security and confidentiality requirements, build out capacity to address access needs by law enforcement and develop the capability for program evaluation and rules and regulations support. KDHE does not have capabilities or knowledge to perform the law enforcement functions or the ability to estimate the related costs. The agency estimates an increase in revenue from patient and caregiver registration fees of \$301,066 in FY 2022, \$454,173 in FY 2023, and \$913,523 in FY 2024.

The Office of Judicial Administration (OJA) indicates that enactment of SB 92 could have a fiscal effect on Judiciary expenditures. Some of the bill's provisions decriminalize actions that could be charged as crimes under current law, which could result in fewer criminal cases being filed. It is also possible that crimes that would be charged under the provision of current law would still be charged, but the provisions of the bill could be asserted as a defense. However, OJA is unable to determine an estimate on expenditures or revenues.

The Office of the Attorney General indicates that enactment of SB 92 would direct the Attorney General to appoint an Assistant Attorney General, with the approval of the Secretary of KDHE, to be the attorney for the Director of the Kansas Medical Cannabis Agency. The salary of the Assistant Attorney General would be the responsibility of KDHE. There would likely be numerous requests for interpretation by local law enforcement or other on elements of the bill's implementation and interaction with other state and federal statutes. The Office indicates that this would result in additional staff time but is unable to determine a fiscal effect on expenditures.

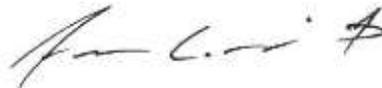
The Kansas Bureau of Investigation (KBI) indicates that the bill does not specify the number of licenses which would be permitted at one time and it does not identify the number of individuals who would apply for identification cards and licenses in accordance with the Act. The KBI is unable to estimate the number of requests for criminal history record checks which could be submitted for processing. Any additional revenue received from the state and national criminal history record check requests sent to the KBI would be offset by expenditures related to staffing and maintenance of the required information technology systems and repositories necessary for the maintenance and dissemination of criminal history record information in accordance with the Act. The KBI lacks the information to accurately estimate the number of cases which would be submitted for analysis to the KBI Forensic Laboratory or the resources needed for examination and testing. Therefore, the fiscal effect on the Forensic Laboratory is unknown.

The Kansas Department for Aging and Disability Services (KDADS) indicates that the bill could result in increased expenditures in the Drug and Alcohol Abuse and Prevention Program, but the costs are unknown. KDADS would require an additional 1.00 FTE position to monitor the marijuana addiction treatment rates. The position would be in the central office and the estimated expenditures for salary and fringe benefits would be \$83,000 from the State General Fund for FY

2022. According to the bill, the agency could receive up to \$4.0 million in revenue to be deposited into the Crisis Stabilization Centers Fund in FY 2023.

The Office of the State Treasurer, the Department of Corrections and the Department of Agriculture indicate that enactment of SB 92 would not have a fiscal effect on the agencies. The Board of Pharmacy indicates that the fiscal effect on Board expenditures is unknown. The League of Kansas Municipalities indicates that the bill would increase revenue to cities, however the amount that would be collected from taxes and licensing fees is unknown. Any fiscal effect associated with SB 92 is not reflected in *The FY 2022 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Lynn Robinson, Department of Revenue
Willie Prescott, Office of the Attorney General
Paul Weisgerber, KBI
Debbie Thomas, Judiciary
Dan Thimmesch, Health & Environment
Lauren Tice Miller, Office of the Treasurer
Kellen Liebsch, Agriculture
Connie Hubbell, Aging & Disability Services
Alexandra Blasi, Board of Pharmacy
Wendi Stark, League of Municipalities
Randy Bowman, Corrections